

## DETAILED ACTION

Currently claims 1-4 are pending and are being examined herein.

### ***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 rejected under 35 U.S.C. 103(a) as being unpatentable over Takeshi et al. (JP 03-128318; using the abstract in the rejection) in view of .

Takeshi et al. teach a composition containing 2-15 mol% of threonine, 4-30 mol% of proline, 7-20 mol% of glycine, 4-8 mol% of valine, 3-9 mol% of isoleucine, 2-12 mol% of leucine, 1-9 mol% of tyrosine, 0.5-5 mol% of phenylalanine, 5-11 mol% of lysine and  $\leq 5$  mol% each of methionine, tryptophan, histidine and arginine.

Takeshi et al. does not teach that aspartic acid, serine, glutamic acid and alanine are in the composition and does not teach a composition that does not contain tryptophan.

Abe et al. teach amino acid compositions comprised of praline, alanine, glycine, valine, threonine, leucine, histidine, serine, lysine, isoleucine, glutamic acid, aspartic acid, arginine, phenylalanine and tyrosine (see Col. 4, lines 40-67 – Col. 5, lines 1-10; Col. 5, lines 19-23).

Accordingly, it would be obvious to one of ordinary skill in the art at the time of the invention to formulate amino acid compositions that do not comprise tryptophan according to the teachings of Abe et al. One would be motivated to formulate amino acid compositions comprised of the amino acids according to the teachings of Takeshi et al. and Abe et al. to include the above mentioned amino acids and to formulate compositions that do not contain tryptophan according to the teachings of Abe et al. to provide supplementation of blood amino acids.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 35 of copending Application No. 12/038,361. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the claims of the present application comprise many amino acids of which overlap with those listed in claim 35 of Application 12/038,361.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,224,861. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of both applications are drawn to amino acid compositions comprised of overlapping amino acids and in mole amounts that overlap. Accordingly, the claims are obvious over the other because they teach amino acid compositions with overlapping amino acids.

### ***Conclusion***

No claims allowed.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renee Claytor whose telephone number is (571)272-8394. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Renee Claytor

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617